

AMENDED IN ASSEMBLY MARCH 25, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1978

Introduced by Assembly Member Harkey

February 17, 2010

~~An act to amend Section 8578 of the Water Code, relating to flood protection. An act to add Section 13209 to the Water Code, relating to regional water quality control boards.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1978, as amended, Harkey. ~~Central Valley Flood Protection Board.~~ *California regional water quality control boards: ex parte communications.*

Under the Porter-Cologne Water Quality Control Act, the 9 California regional water quality control boards are among the principal state agencies that carry out responsibilities relating to water quality. The act prescribes requirements relative to meetings of the regional boards and prohibits a member of a regional board from participating in a proceeding before a regional board or State Water Resources Control Board, or specified actions of the regional board, under certain circumstances.

The Administrative Procedure Act provides for the conduct of administrative adjudication proceedings of state agencies. The act generally prohibits, during a pending proceeding, communication regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate, except as specified.

This bill would exempt from the provisions of the Administrative Procedure Act pertaining to prohibited communications, specified ex parte communications relating to proceedings of the regional boards. The bill would establish requirements for the disclosure of an ex parte communication, as defined, relating to a matter before a regional board.

~~Existing law establishes the Sacramento and San Joaquin Drainage District under the administration of the Central Valley Flood Protection Board for the purposes of carrying out specified flood management activities within the boundaries of the district. Existing law requires the board, in any evidentiary hearing, to consider various matters, including the effects of a proposed action on the State Plan of Flood Control, as defined. Existing law prohibits a board member or any person or organization with an interest in board decisions, or any person representing a person or organization with an interest in board decisions who intends to influence the decision of a board member on a matter before the board, from conducting an ex parte communication, as defined.~~

~~This bill would make technical, nonsubstantive changes to this prohibition.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13209 is added to the Water Code, to
- 2 read:
- 3 13209. (a) (1) For purposes of this section, “ex parte
- 4 communication” means an oral or written communication made
- 5 outside of a noticed regional board meeting concerning a matter
- 6 regarding any of the following:
- 7 (A) The prescription of waste discharge requirements.
- 8 (B) An order requiring cleanup or abatement of waste.
- 9 (C) The issuance of a cease and desist order.
- 10 (D) An order imposing administrative liabilities or penalties.
- 11 (E) Any other quasi-judicial matter requiring regional board
- 12 action, after the matter has been placed on the regional board’s
- 13 agenda and notice of the meeting has been provided pursuant to
- 14 Section 11125 of the Government Code.
- 15 (2) For purposes of this section, “ex parte communication”
- 16 does not include a communication concerning a purely procedural

1 *matter that does not involve any expression or opinion about the*
2 *merits of a matter before the regional board.*

3 *(b) (1) A member of a regional board shall not participate in*
4 *an ex parte communication with a person or organization with an*
5 *interest in regional board decisions, or any person representing*
6 *a person or organization with an interest in regional board*
7 *decisions, unless the member fully discloses and makes public the*
8 *ex parte communication by placing it in the official record of the*
9 *regional board's proceeding.*

10 *(2) If an ex parte communication occurs, the member shall notify*
11 *the interested party that a full disclosure of the ex parte*
12 *communication shall be entered into the official record of the*
13 *regional board's proceeding.*

14 *(3) A communication ceases to be an ex parte communication*
15 *when it is fully disclosed and placed in the official record of the*
16 *regional board's proceeding.*

17 *(c) Notwithstanding Section 11425.10 of the Government Code,*
18 *the ex parte communications provisions of the Administrative*
19 *Procedure Act (Article 7 (commencing with Section 11430.10) of*
20 *Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government*
21 *Code) do not apply to proceedings of the regional board to which*
22 *this section applies.*

23 ~~SECTION 1. Section 8578 of the Water Code is amended to~~
24 ~~read:~~

25 ~~8578. (a) For the purposes of this section, "ex parte~~
26 ~~communication" means an oral or written communication outside~~
27 ~~of a noticed board meeting concerning matters, other than purely~~
28 ~~procedural matters, regarding any of the following:~~

29 ~~(1) An application that has been submitted to the board and has~~
30 ~~been determined to be complete by the executive officer.~~

31 ~~(2) An enforcement action.~~

32 ~~(3) Any other quasi-judicial matter requiring board action, after~~
33 ~~the matter has been placed on the board's agenda and notice of the~~
34 ~~meeting has been provided pursuant to Section 11125 of the~~
35 ~~Government Code.~~

36 ~~(b) (1) A board member appointed pursuant to subdivision (b)~~
37 ~~of Section 8551 shall not participate in an ex parte communication~~
38 ~~with a person or organization with an interest in board decisions,~~
39 ~~nor a person representing a person or organization with an interest~~
40 ~~in board decisions, excluding a staff member of the board acting~~

1 in his or her official capacity, who intends to influence the decision
2 of a board member on a matter before the board.

3 (2) ~~If an ex parte communication occurs, the board member~~
4 ~~shall notify the interested party that a full disclosure of the ex parte~~
5 ~~communication shall be entered in the board's record.~~

6 (3) ~~Communications cease to be ex parte communications when~~
7 ~~the board member or the person who engaged in the communication~~
8 ~~with the board member fully discloses the communication and~~
9 ~~requests in writing that it be placed in the official record of the~~
10 ~~board's proceeding.~~

11 (e) ~~Notwithstanding Section 11425.10 of the Government Code,~~
12 ~~the ex parte communications provisions of the Administrative~~
13 ~~Procedure Act (Article 7 (commencing with Section 11430.10) of~~
14 ~~Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government~~
15 ~~Code) do not apply to proceedings of the board to which this~~
16 ~~section applies.~~